

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GLOBAL VERGE, INC., a Nevada corporation,)
)
Plaintiff,)
)
vs.)
)
DERRICK L. RODGERS, an individual;)
PEOPLE HELPING PEOPLE, INC.,)
)
Defendants.)

Case No.: 2:10-cv-01360-RLH-RJJ

ORDER

(Motion to Dismiss—#7; Motion for
Temporary Restraining Order and
Preliminary Injunction—#8)

Before the Court is Defendants Derrick L. Rodgers and People Helping People, Inc.’s **Motion to Dismiss** (#7), filed August 23, 2010. The Court has also considered Plaintiff Global Verge, Inc.’s (“Global”) Opposition (#15), filed September 17, 2010, and Defendants’ Reply (#18), filed September 23, 2010.

Also before the Court is Global’s **Motion for Temporary Restraining Order and Preliminary Injunction** (#8), filed August 27, 2010. The Court has also considered Defendants’ Opposition (#17), filed September 20, 2010, and Global’s Reply (#19), filed September 30, 2010.

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BACKGROUND

This case involves the alleged breach of a non-disclosure agreement entered into between Rodgers and Global. The following facts are either alleged by Global or are uncontradicted, unless otherwise noted. Global is an internet based business incorporated in Nevada with its principal place of business in Missouri. Rodgers is a North Carolina citizen. Global sells products at “wholesale” to people—-independent business operators of some kind or e-associates—who can then sell these products at retail. Global hired Rodgers as a consultant and had him sign a Non-Disclosure / Non-Circumvent Agreement (the “NDA”) on or about July 30, 2009. Rodgers negotiated this agreement in North Carolina, only dealt with people in Missouri, and only faxed documents to Missouri. Rodgers never dealt with anyone in Nevada or sent documents to Nevada. After Rodgers signed the agreement, Global provided Rodgers with certain confidential and proprietary information in his capacity as a consultant. Rodgers and Global terminated their relationship on or about November 16, 2009, not quite four months after Rodgers began consulting Global.

After Rodgers ceased working with Global, Defendant People Helping People (“PHP”) hired him as its new CEO. PHP is a Delaware corporation with its principal place of business in North Carolina. Global believes that Rodgers disclosed Global’s confidential information to PHP because PHP now uses the same or similar business model as Global and sells the same products to independent sales people or e-associates. PHP operates at least two websites (www.phpico.com and www.teamgg.com) that give information about the PHP, allow people to sign up to receive newsletters, and apply to become these independent type sales operators that both companies apparently use. Global claims that PHP has been able to replicate its business model because Rodgers disclosed confidential information to PHP after he began employment there.

Global filed this suit with the Eighth Judicial District Court for the State of Nevada on June 8, 2010, alleging (1) breach of contract, (2) breach of the duty of good faith and fair

1 dealing, (3) misappropriation, (4) conversion, (5) tortious interference with contractual relations,
 2 (6) tortious interference with prospective economic advantage, (7) civil conspiracy/concert of
 3 action, (8) unfair competition/unjust enrichment, and (9) injunctive relief. Defendants removed
 4 the case to this Court on August 11. For the reasons set forth below, the Court grants Defendants'
 5 motion and dismisses this case.

6 DISCUSSION

7 I. Personal Jurisdiction

8 A. Legal Standard

9 Rule 12(b)(2) of the Federal Rules of Civil Procedure provides that a court may
 10 dismiss a complaint for "lack of jurisdiction over the person." "Where a defendant moves to
 11 dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of
 12 demonstrating that jurisdiction is appropriate." *Schwarzenegger v. Fred Martin Motor Co.*, 374
 13 F.3d 797, 800 (9th Cir. 2004). A court evaluating such a motion may consider evidence presented
 14 in affidavits to assist it in its determination and may order discovery on the jurisdictional issues.
 15 *Data Disc, Inc. v. Systems Technology Assoc., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). Where a
 16 court proceeds on the basis of affidavits and without discovery and an evidentiary hearing, "the
 17 plaintiff need only make a prima facie showing of jurisdiction to avoid the defendant's motion to
 18 dismiss," that is, demonstrate facts that, if true, would support jurisdiction over the Defendant.
 19 *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir.
 20 2003). "Although the plaintiff cannot 'simply rest on the bare allegations of its complaint,' *Amba*
 21 *Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977),
 22 uncontroverted allegations in the complaint must be taken as true, *AT & T v. Compagnie Bruxelles*
 23 *Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). Conflicts between parties over statements contained in
 24 affidavits must be resolved in the plaintiff's favor." *Schwarzenegger*, 374 F.3d at 800.

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1 **B. Analysis**

2 When there is no governing federal statute, a district court must apply the personal
3 jurisdiction law of the state in which it sits. *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1110
4 (9th Cir. 2002). Since Nevada’s long-arm statute is coextensive with the United States
5 Constitution and its due process requirements, *Welburn v. Eighth Judicial Dist. Court*, 806 P.2d
6 1045, 1046 (Nev. 1991), the personal jurisdiction question is simply analyzed under federal due
7 process standards. Further, there are two types of personal jurisdiction: general and specific.
8 *Trump v. District Court*, 857 P.2d 740, 748 (Nev. 1993). The Court will address both types of
9 jurisdiction as plaintiff argues that both apply. In this analysis, the Court determines that it does
10 not have general or specific jurisdiction over either of the defendants.

11 **1. General Jurisdiction**

12 The exercise of general jurisdiction is appropriate when a defendant’s activities in
13 the forum are so “substantial” or “continuous and systematic,” *Helicopteros Nacionales de*
14 *Columbia, S.A. v. Hall*, 466 U.S. 408, 416 (1984), that it “approximates physical presence” in the
15 forum state, *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).
16 Some of the factors that a court may consider in making this determination are “whether the
17 defendant makes sales, solicits or engages in business in the state, serves the state’s markets,
18 designates an agent for service of process, holds a license, or is incorporated there.” *Id.* Rare or
19 insubstantial contact or business with the forum, therefore, is insufficient for general jurisdiction.

20 **i. Derrick Rodgers**

21 General jurisdiction is inappropriate against Rodgers. Here, Rodgers has never
22 entered Nevada and there is no allegation that he has directly done business in or with Nevada.
23 The only factual allegations are that Rodgers entered into a contract with a Nevada corporation,
24 that he misappropriated data from the Nevada corporation, and that as CEO of a different

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1 corporation he solicited four, and maybe more, Nevada citizens¹ to become e-associates or
2 independent business operators for PHP. Global asserts various torts related to these alleged acts,
3 but they do not create substantial or continuous and systematic contact with Nevada. Therefore,
4 they are insufficient for general jurisdiction.

5 Applied here, Rodgers never purposefully availed himself of the benefits and
6 privileges of Nevada law and did not engage in substantial, continuous, or systematic contact with
7 Nevada. Beyond never physically entering Nevada, Rodgers never communicated with anyone
8 physically present in Nevada in negotiating his contract with Global. In negotiating the contract,
9 Rodgers communicated with and faxed documents back and forth with people in Missouri, not
10 Nevada. Further, the contract itself states that it is to be governed by Massachusetts rather than
11 Nevada law. (Dkt. #7, Mot. Ex. A at § 11(a).) Therefore, at no point did Rodgers avail himself of
12 Nevada, much less in a continuous or systematic way. Finally, the contract was executed in North
13 Carolina and no work was done or required to be done in Nevada. To determine that merely
14 entering a contract with a foreign entity in one's home states submits that person to jurisdiction in
15 the state where that entity may be incorporated is nonsensical and does not take into account the
16 practicalities of commerce. *See Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001). For
17 example, opening a bank account in Nevada cannot create general personal jurisdiction in
18 Delaware just because the bank happens to be incorporated there, that is simply not substantial or
19 continuous and systematic contact with the forum. *See Helicopteros*, 466 U.S. at 416.

20 Global also argues that since Rodgers worked for Global for four months "he was
21 able to market to and engage in business with Nevada residents." This is also insufficient to create
22 general jurisdiction. While Rodgers' employment as an e-associate (though not as a consultant) is
23 disputed, it is immaterial. Global does not allege that Rodgers did business with Nevada as an e-
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25 ¹ PHP presents evidence that two of these four are actually residents of other states and that a third never
26 actually joined or enrolled with PHP. However, the fourth was a Nevada member of PHP at the time Global
commenced this lawsuit even though he has since disassociated from PHP.

1 associate, only that he could have. With modern technology any person can engage in business
 2 with people in nearly any forum at any time. The mere opportunity to engage in conduct that may
 3 create general jurisdiction is not the same as actually engaging in that conduct. Therefore this
 4 allegation does not create general jurisdiction either.

5 Finally, the assertion of general personal jurisdiction must be reasonable. *Amoco*
 6 *Egypt Oil Co. v. Leonis Navigation Co., Inc.*, 1 F.3d 848, 852–53 (9th Cir. 1993). Courts will
 7 generally consider seven various factors that the Court need not lay out here. *See id.* The burden
 8 of showing that jurisdiction is unreasonable is on the defendant. *Gator.com Corp. v. L.L. Bean,*
 9 *Inc.*, 341 F.3d 1072, 1081 (9th Cir. 2003). Here, jurisdiction over Rodgers is unreasonable. To
 10 extend general jurisdiction against a person whose only contact with a forum is employment by a
 11 company incorporated in the forum and an employment related contract with that same company
 12 goes beyond reason. Because employers are frequently incorporated far from where people work,
 13 this would extend general jurisdiction beyond its rational bounds and could force employees to
 14 litigate in areas of the country with which they have no real, substantive relationship and give an
 15 overwhelming advantage to employers. For the foregoing reasons, the Court does not have general
 16 jurisdiction over Rodgers.

17 **ii. People Helping People, Inc.**

18 The Ninth Circuit has adopted a sliding scale approach based on *Zippo Mfg. Co. v.*
 19 *Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D. Pa. 1997), in analyzing general jurisdiction as
 20 regards internet based parties. *Gator.com*, 341 F.3d at 1079. This sliding scale test requires that
 21 the defendant clearly engages in business over the internet and that the defendant’s business
 22 contacts with the forum be substantial or continuous and systematic. *Id.* The Ninth Circuit
 23 recognizes that digital storefronts are functionally equivalent to physical stores, at least for
 24 jurisdictional purposes, and therefore does not require physical presence in the state. *Id.*
 25 Nonetheless, the “nature of the commercial activity” must be substantial enough to “approximate
 26 physical presence.” *Id.* (quoting *Bancroft & Masters*, 223 F.3d at 1086).

Applying this sliding scale test, the Court does not have general jurisdiction over PHP. While PHP clearly has an internet presence, it is far less clear whether it clearly does business over the internet. This is not L.L. Bean, Amazon.com, Newegg.com, or another internet retailer that clearly does business over the internet. *See Gator.com*, 341 F.3d at 1080. Nor is it a financial entity engaging in non-retail commerce on the internet. *See Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 512–13 (D.C. Cir. 2002). Instead, PHP provides informational websites where people can sign-up or apply to become some sort of independent salesperson who purchases products from PHP and then sells them on their own. Apparently, no one can buy anything directly from PHP's websites, all they can do is submit personal information to PHP in the application process and learn about the company. While these are interactive websites, without something more, they are insufficient to confer general jurisdiction over PHP. *See Revell v. Lidov* 317 F.3d 467, 470–71 (5th Cir. 2002) (holding that the court did not have general jurisdiction over a defendant whose website allowed users to subscribe to a journalism review, purchase advertising, and submit electronic admissions applications because the cited contacts with the forum were not substantial). Here, where Global can only show the website and one actual PHP connected Nevada resident, the contacts are simply not substantial and are, therefore, insufficient to confer general jurisdiction over the company.

2. Specific Jurisdiction

The Ninth Circuit analyzes specific jurisdiction using a three-prong test to determine whether a forum has specific jurisdiction over a particular defendant. *Schwarzenegger*, 374 F.3d at 802. The three prongs are:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

1 *Id.* For specific jurisdiction over a defendant, a plaintiff must establish the first two prongs, and if
2 he does, the burden shifts to the defendant to show that the third prong is not met.

3 *Schwarzenegger*, 374 F.3d at 802. Here, the Defendants did not direct their actions at or avail
4 themselves of Nevada, the claims are not sufficiently related to forum activity, and, importantly,
5 the exercise of jurisdiction would not “comport with fair play and substantial justice” and would
6 not be reasonable. *Id.*

7 **i. Derrick Rodgers**

8 Global asserts both contract and tort claims against Rodgers. Therefore, in
9 addressing the first prong of the test, the Court must address whether Rodgers either purposefully
10 availed himself of Nevada or purposefully directed his activities at Nevada. This is because the
11 purposeful availment analysis applies to contract claims and purposeful direction applies to tort
12 claims. *See Schwarzenegger*, 374 F.3d at 802. Purposeful availment may be shown by conduct
13 “such as executing or performing a contract” in the forum. *Id.* A showing of purposeful direction,
14 on the other hand, consists of evidence that the “defendant’s actions outside the forum state [were]
15 directed at the forum.” *Id.*

16 **a. Purposeful Availment**

17 As the Court explained above, Rodgers has not purposefully availed himself of
18 Nevada. Global argues that Nevada has jurisdiction over Rodgers because of the contract Rodgers
19 executed with it and because Rodgers worked for it. The Court disagrees; neither confers
20 jurisdiction. As shown above, Rodgers did not execute the contract in Nevada, negotiate the
21 contract in Nevada, or perform the contract in Nevada. He never worked in Nevada and his work
22 did not even involve Nevada. Further, the contract states that it is to be governed by
23 Massachusetts law and so Rodgers does not even avail himself of Nevada law in the interpretation
24 of the contract. Finally, Global argues that PHP’s business in Nevada confers jurisdiction over
25 Rodgers. This is inaccurate. PHP’s conduct is insufficient to create jurisdiction over Rodgers
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1 because the two are different entities. Therefore, Rodgers has not purposefully availed himself of
 2 Nevada and the first prong of the test fails with regard to the contract claims.

3 **b. Purposeful Direction**

4 Rodgers has not purposefully directed his activities at Nevada. Purposeful
 5 direction is analyzed under the three-part *Calder* effects test. *Schwarzenegger*, 374 F.3d at 804
 6 (citing *Calder v. Jones*, 465 U.S. 783 (1984)). *Calder* “requires that the defendant allegedly have
 7 (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
 8 defendant knows is likely to be suffered in the forum state.” *Id.* (quoting *Dole Food*, 303 F.3d at
 9 1111). Global argues that since it is incorporated in Nevada, the affect of any tort against it is felt
 10 in Nevada and that Rodgers (and PHP) should reasonably know this. However, Global does not
 11 support its argument that mere incorporation makes the effect of any tort felt in (or aimed at) the
 12 company’s state of incorporation with any legal citations.

13 The express aiming requirement is not met merely because the plaintiff is
 14 incorporated in the forum state, more is required. *See Bancroft & Masters*, 223 F.3d at 1087; *see*
 15 *also Schwarzenegger*, 374 F.3d at 807 (determining that the fact that defendant may have known
 16 that plaintiff lived in the forum was insufficient to show express aiming at the forum). The Ninth
 17 Circuit has determined “that in appropriate circumstances a corporation can suffer economic harm
 18 both where the bad acts occurred and where the corporation has its principal place of business.”
 19 *Dole Food*, 303 F.3d at 1113. Other cases from other circuits also refer to a corporation’s
 20 principle place of business, not its state of incorporation, in determining where harm occurred.
 21 *See, e.g., Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1388–89 (8th Cir. 1991)
 22 (The plaintiff corporation “has its principal place of business in the forum state and thus suffered
 23 the economic injury there.”). While these cases are generally discussing this issue in reference to
 24 choice of law analysis, the reasoning holds here as well.

25 Personal jurisdiction by way of express aiming does not logically extend from a
 26 corporation’s principle place of business, where it actually is, to its state of incorporation, where

1 its foundational papers are. Corporations generally incorporate in a particular state either because
2 they are located in the state or for internal governance and legal matters. However, by
3 incorporating in a particular forum a corporation may be sued there regardless of whether they do
4 anything else there. Corporations do this because they believe that certain states internal
5 governance laws can afford great protection and be very valuable to the corporation. However, it
6 does not follow that by this strategy the corporation gains the right to sue anybody else in that
7 same forum regardless of where the bad acts took place. Here, where there is no evidence that the
8 bad acts actually took place in Nevada, were in any way aimed or directed at Nevada, or that the
9 Defendants knew the effect of which would occur in Nevada, the *Calder* test and the purposeful
10 direction prong are not met.

11 **c. Remaining Prongs**

12 Since the Court has determined that Rodgers neither purposefully availed himself
13 nor purposefully directed his actions at the forum, the Court need not address the other two
14 prongs. Nonetheless, the Court will address them succinctly. First, the Court has already
15 determined that Rodgers did not engage in activities sufficiently related to this forum for them to
16 count in the Court's analysis and therefore the claims cannot relate to forum related activity.
17 Finally, any exercise of jurisdiction based on the facts alleged by Global would be unreasonable
18 and violate the Court's sense of fair play and substantial justice. The connection to the forum is
19 simply too tenuous for the Court to assert jurisdiction. Therefore, even if the first two prongs were
20 met, the Court would not have specific jurisdiction over Rodgers. Because Global does not satisfy
21 the requirements for either general or specific personal jurisdiction, the Court grants the motion to
22 dismiss as regards Rodgers.

23 **ii. People Helping People, Inc.**

24 While Global asserts both contract and tort claims against Rodgers, Global does not
25 allege the contractual claims against PHP. The Court, therefore, need only address purposeful
26 direction in analyzing the first prong of the three-prong specific jurisdiction test detailed above.

1 **a. Purposeful Direction**

2 Under the *Calder* effects test used above, PHP's conduct does not meet the
3 purposeful direction requirement. Global makes the same arguments against PHP as it did against
4 Rodgers and therefore the same analysis applies. Again, Global does not support its argument that
5 mere incorporation makes the effect of PHP's actions felt in or aimed at Nevada. Therefore the
6 *Calder* test and the purposeful direction prong fail.

7 **b. Forum Related Activities**

8 Global does allege some PHP forum related activities. Principally, Global alleges
9 that PHP has hired away at least four of Global's Nevada e-associates. However, PHP sufficiently
10 rebuts these unsupported allegations as to three of the e-associates. While the Court is not certain
11 that "hire" or even "employ" would be the correct terms to use in the type of arrangements both of
12 these companies use, the Court determines that it is immaterial. Even if this minor forum related
13 activity is related to the conduct of which Global complains of, the other two prongs are not met
14 and therefor the Court will not address this prong further.

15 **c. Fair Play and Substantial Justice**

16 As above, applied to Rodgers, PHP's connections to the forum are too tenuous to
17 support specific personal jurisdiction even if all of Global's factual allegations are true. Any bad
18 conduct appears to have occurred in North Carolina, where Rodgers and PHP are both located, and
19 any such conduct was aimed at and felt in Missouri, where Global has its principal place of
20 business. The connections to Nevada (Global's incorporation, one known e-associate, and
21 theoretical e-associate poaching) are too tenuous to support specific jurisdiction. Because the
22 Court does not have either general or specific jurisdiction over PHP, the Court must grant the
23 motion to dismiss PHP.

24 **3. Jurisdictional Discovery**

25 The Court denies Global's request for jurisdictional discovery. Jurisdictional
26 discovery "may be appropriately granted where pertinent facts bearing on the question of

jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.”
Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008). The party seeking discovery bears the
 burden of showing that the denial of discovery results in actual and substantial prejudice to it. *Id.*
 Here, Global cannot demonstrate actual or substantial prejudice because it still has viable forums
 available to it that would not be prejudicial (namely, Missouri, its principal place of business) and
 that would be required to apply the same law as this Court would apply. Further, only one
 possible witness is in Nevada, the others all appear to be in Missouri or North Carolina. Since
 Global cannot demonstrate actual and substantial prejudice, the Court denies its request for
 jurisdictional discovery.

II. Temporary Restraining Order and Preliminary Injunction

The Court cannot issue a temporary restraining order or a preliminary injunction
 against parties over which it does not have personal jurisdiction. Since the Court previously
 established that it does not have jurisdiction over the defendants to this case and therefore must
 dismiss this case in its entirety, the Motion for Temporary Restraining Order and Preliminary
 Injunction is denied as moot.

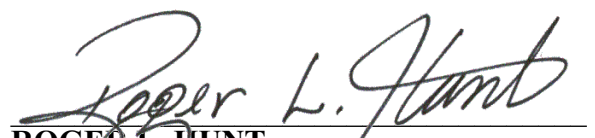
CONCLUSION

Accordingly, and for good cause appearing,
 IT IS HEREBY ORDERED that Defendants’ Motion to Dismiss (#7) is
 GRANTED.

IT IS FURTHER ORDERED that Global’s Motion for Temporary Restraining
 Order and Preliminary Injunction (#8) is DENIED as moot.

The Clerk of the Court is directed to close this case.

Dated: January 7, 2011.


ROGER L. HUNT
 Chief United States District Judge